COURT'S INSTRUCTIONS TO THE JURY

Members of the Jury:

A jury trial has, in effect, two judges. I am one of the judges; the other judge is the jury. My duty is to preside over the trial and to decide what evidence is proper for your consideration. My duty at the end of the trial is to explain to you the rules of law that you must follow and apply in arriving at your verdict.

First, I will give some general instructions that apply in every case; for example, instructions about burden of proof and how to judge the believability of witnesses. Then I will give you some specific rules of law about this particular case, and finally I will explain to you the procedures you should follow in your deliberations.

Your duty will be to decide whether the Government has proved beyond a reasonable doubt the specific facts necessary to find the Defendant[s] guilty of the crime[s] charged in the indictment.

As I have already told you, you must make your decision only on the basis of the testimony and other evidence presented here during the trial. You must not be influenced in any way by either sympathy or prejudice, for or against the Defendant[s], nor by sympathy or prejudice for or against the Government.

You, as jurors, are the judges of the facts. But in determining what actually

happened–that is, in reaching your decision as to the facts–your sworn duty is to follow all of the rules of law as I explain them to you.

You have no right to disregard or give special attention to any one instruction, or to question the wisdom or correctness of any rule I may state to you. You must not substitute or follow your own notion or opinion as to what the law is or ought to be. Your duty is to apply the law as I explain it to you, regardless of whether you like the law or its consequences.

Your duty also is to base your verdict solely upon the evidence, without prejudice or sympathy. You made that promise and took that oath before being accepted by the parties as jurors, and they have the right to expect nothing less.

The indictment or formal charge against a Defendant is not evidence of guilt. Indeed, [every] defendant is presumed by the law to be innocent. The law does not require a Defendant to prove his [her] innocence or produce any evidence at all; and if a Defendant elects not to testify, you cannot consider that decision in any way during your deliberations. The Government has the burden of proving the Defendant guilty beyond a reasonable doubt, and if it fails to do so, you must acquit the Defendant; that is, if the Government fails to convince you beyond a reasonable doubt as to the Defendant's guilt, you must find the Defendant not guilty.

Your job is to determine whether the Government has proven beyond a reasonable doubt every element of each of charge against the Defendant. If the Government fails to prove beyond a reasonable doubt even one requirement, then you must find the Defendant not guilty of that charge.

You will note that I did not say that you have to decide whether the Defendant is guilty or innocent. The question of whether the Defendant is innocent is really not before you. You do not have to reach that question.

In essence, your job is to sift through the evidence, determine what the true facts are, and then decide whether the facts prove the requirements of the offense beyond a reasonable doubt. If you are convinced beyond a reasonable doubt that the Government proved each required element of the offense, then your verdict should be guilty. On the other hand, if the Government fails to convince you beyond a reasonable doubt of the truth of any element of an offense, then you must find the Defendant not guilty regardless of whether you personally believe the Defendant is innocent of the charges.

While the Government's burden of proof is a strict or heavy burden, the Government need not prove a Defendant's guilt *beyond all possible doubt*. The Government's proof is only required to exclude any "reasonable doubt" concerning the Defendant's guilt. A "reasonable doubt" is a real doubt, based

upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the Government has proved the Defendant is guilty beyond a reasonable doubt, say so with a verdict of guilty. If you are not so convinced, say so with a verdict of not guilty.

As I said earlier, in reaching your decision you must consider only the evidence that I have admitted in the case. The term "evidence" includes the testimony of the witnesses and the exhibits admitted or accepted in the record. Remember that anything the lawyers say is not evidence in the case. Your own recollection and interpretation of the evidence controls. What the lawyers say is not binding upon you. Also, you should not assume from anything I may have said that I have any opinion concerning any of the issues in this case. Except for my instructions to you on the law, you should disregard anything I may have said during the trial in arriving at your own decision concerning the facts.

While you should consider only the evidence, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of your common experience. In other words, you may make

deductions and reach conclusions that reason and common sense lead you to draw from the facts that have been established by the evidence.

You should not be concerned about whether the evidence is direct or circumstantial. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eye witness. "Circumstantial evidence" is proof of a chain of facts and circumstances tending to prove, or disprove, any fact in dispute. The law makes no distinction between the weight you may give to either direct or circumstantial evidence, or to the reasonable inferences you draw from direct or circumstantial evidence.

Now, in saying that you must *consider* all of the evidence, I do not mean that you must *accept* all of the evidence as true or accurate. You should decide whether you believe what each witness had to say, and how important that testimony was. In making that decision, you may believe or disbelieve any witness, in whole or in part. Also, the number of witnesses testifying concerning any particular dispute is not controlling.

In deciding whether you believe or do not believe any witness, I suggest that you ask yourself a few questions: Did the witness impress you as one who was telling the truth? Did the witness have any particular reason not to tell the truth? Did the witness have a personal interest in the outcome of this case or a related

case? Did the witness seem to have a good memory? Did the witness have the opportunity and ability to observe accurately the things about which he or she testified? Did the witness appear to understand the questions clearly and answer them directly? Did the witness's testimony differ from other testimony or other evidence?

You should also ask yourself whether evidence was offered tending to prove that a witness testified falsely concerning some important fact; or, whether evidence was offered that at some other time a witness said or did something, or failed to say or do something, that was different from the testimony he or she gave before you during the trial.

[The fact that a witness has been convicted of a felony offense, or a crime involving dishonesty or false statement, is another factor you may consider in deciding whether you believe the testimony that witness gave in this trial.]

You should keep in mind, of course, that a simple mistake by a witness does not necessarily mean that the witness was not telling the truth as he or she remembers it, because people naturally tend to forget some things or remember other things inaccurately. So, if a witness has made a misstatement, you need to consider whether it was simply an innocent lapse of memory or an intentional falsehood; and the significance of that may depend on whether the misstatement

relates to an important fact or to only an unimportant detail.

[When a witness is questioned about an earlier statement he or she may have made, or earlier testimony he or she may have given, such questioning is permitted to aid you in evaluating the truth or accuracy of the witness' testimony here *at this trial*.

Earlier statements made by a witness or earlier testimony given by a witness are not ordinarily offered or received as evidence of the truth or accuracy of *those* statements, but are referred to for the purpose of giving you a comparison and aiding you in making your decision as to whether you believe or disbelieve the witness' testimony that you hear *at trial.* However, if the prior inconsistent statement of the witness was made under oath or in the grand jury, you may also consider it as evidence.]

Whether such prior statements of a witness are, in fact, consistent or inconsistent with his or her trial testimony is entirely for you to determine. You can also decide whether to believe the earlier testimony given under oath, or the testimony given in this trial, or you can disregard both.

A Defendant has a right not to testify. If a Defendant does testify, however, you should decide in the same way as you would any other witness whether you believe the Defendant's testimony.

INSERT JURY INSTRUCTIONS

You will note that the indictment charges that certain offenses were committed " in or around" and "on or about" certain dates. The Government does not have to prove with certainty the exact date of the alleged offense. The evidence is sufficient if the Government proves beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

The word "knowingly," as that term is used in the indictment and in these instructions means that the act was done voluntarily and intentionally and not because of mistake or accident.

The word "willfully," as that term is used in the indictment and in these instructions means that the act was committed voluntarily and purposely, with the specific intent to do something the law forbids; that is, with bad purpose either to disobey or disregard the law.

We will now hear summations, or closing arguments, from the attorneys. Remember that what the lawyers say is not evidence. I encourage you to test what the lawyers say against your own memory of the evidence. You are the judges of the facts – not the lawyers.

You are the sole judge of the credibility of witnesses.

Final Instruction

Ladies and Gentlemen of the Jury:

I remind you once again that the arguments of counsel are not evidence in this case. The court allows counsel to make closing arguments or summations to help you recall the evidence and to help you tie the evidence together. You should not substitute what the lawyers say about the evidence for your own recollection. Neither should you decide this case based on the eloquence of these attorneys and their arguments. You must decide the case solely based on your view of the facts as you find them to be from the evidence, and applying the law to those facts as I have instructed you.

The indictment charges a separate crime or offense against one or more of the Defendants in each count of the indictment. Each charge in each count, and the evidence pertaining to it, should be considered separately. Your decision on one count need not be the same as to the other count.

Also, the case of each Defendant should be considered separately and individually. In this case, you could find one Defendant guilty on one or more counts, and find the other Defendant[s] not guilty on one or more count. In other words, your decision as to one Defendant should not affect your verdict as to the other Defendant.

I caution you, members of the Jury, that you are here to determine from the evidence in this case whether [the] [each] Defendant is guilty or not guilty. Each [the] Defendant is on trial only for the specific offense[s] alleged in the two counts of the indictment.

Also, you, the jury, should never consider the question of punishment in any way in deciding the case. If a Defendant is convicted, the matter of punishment is for the Judge alone to determine later.

Any verdict you reach in the jury room, whether guilty or not guilty, must be unanimous. In other words, to return a verdict you must all agree on each element of each count of the indictment and must agree as to each Defendant charged.

Your deliberations will be secret; you will never have to explain your verdict to anyone.

Your duty as jurors is to discuss the case with one another and consult with one another in an effort to reach agreement, if you can do so. Each of you must decide the case for yourself, but only after full and impartial consideration of the evidence with the other members of the jury. While you are discussing the case, do not hesitate to reexamine your own opinion and change your mind, if you become convinced that your initial opinion was wrong. But do not give up your

honest beliefs as to the weight or effect of the evidence solely because the others think differently, or merely to return a verdict.

In this case you have been permitted to take notes during the course of the trial, and most of you – perhaps all of you – have taken advantage of that opportunity and have made notes from time to time.

You will have your notes available to you during your deliberations, but you should make use of them only as an aid to your memory. In other words, you should not give your notes any precedence over your independent recollection of the evidence or the lack of evidence; and neither should you be unduly influenced by the notes of other jurors.

I emphasize that notes are not entitled to any greater weight than the memory or impression of each juror as to what the testimony may have been.

Remember, in a very real way you are judges – judges of the facts and judges of the credibility of the witnesses. Your only interest is to seek the truth from the evidence in the case. Your duty is to decide whether the Government has proved the Defendants guilty beyond a reasonable doubt.

When you go to the jury room, you should first select one of your members to act as your foreperson. The foreperson will guide your deliberations and will speak for you here in court.

The court has prepared a verdict form for your convenience.

You will take the verdict form to the jury room. When you have reached unanimous agreement, you will have your foreperson fill in the verdict form [as to each count], date and sign it, and then return to the courtroom. When you have reached your decision, knock on the jury room door and tell the marshal that you have a verdict.

If you should desire to communicate with me at any time, please write down your message or question and pass the note to the marshal, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you returned to the courtroom so that I can address you orally. I caution you, however, regarding any message or question you might send, that you should not tell me your numerical division at the time.